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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5481 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

PAREKH SALONEE KISHORBHAI

Versus

GUJARAT SECONDARY EDUCATION BOARD

Appearance:

MR KA PUJ for Petitioner

MR MC BHATT with MS Himali Dave for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 21/08/97

ORAL JUDGEMENT

The petitioner seeks a direction on the respondent to modify the petitioner's result and give her higher marks in the subjects of Biology and Mathematics Paper II, for which the examination was held in March, 1997. According to the petitioner, she had secured 398 out of 450 marks in Science and Mathematics and since the petitioner was not satisfied with the marks in Biology

and Mathematics Paper II, she applied for rechecking of the marks. As per the result sheet, she was getting 71 marks in Mathematics Paper II and 90 marks in Biology. The petitioner applied for personal verification of the answer books, which was done on 18th July, 1997 and during which it was found that one mark each in Mathematics Paper II and Physics was increased and the Board has issued a revised mark-sheet on 18.7.97. According to the petitioner, during the course of verification of the answer sheets, the moderator has reduced 5 marks in Biology and 2 marks in Mathematics Paper II. According to the petitioner, there was no reason for the moderator to reduce these marks and if the petitioner was to get these 7 marks, that would secure her place in the merit list of the Surat Medical College. It is alleged in paragraph 6 of the petition that there are various factors which play vital role in preparation of the results and in causing irreparable loss and injury to the future of many bright and promising students. After enumerating several factors including "rampant corruption, negligence of the examiners..... mistakes, intentional or otherwise ... irregularities and unhealthy practices at the examination centres....", the petitioner has alleged that "the entire system has become sick and it has totally failed". It is also alleged that "the field of education has become the biggest trade centre in the country and marks, degrees, ranks, medals and certificates can be purchased by paying the price irrespective of the fact whether recipient of such degrees, ranks or medals deserve it or not."

Notice was issued on the respondents on 29th July, 1997 of this petition and later on, a direction was given on 11th Aug. 97 to the respondent authority to file an affidavit to explain the reduction of marks by the moderator.

According to the respondents, the centralised evaluation system has been introduced in the Science stream since many years and the identity of the candidate is concealed from the Senior Evaluators and Chief Moderator. At the centralised examination place, all answer books are kept, teams of evaluators are formed and the evaluation work of each team is continuously supervised by the Senior Evaluator, who provides guidance to the evaluators from time to time and at random moderates certain answer books. It is stated in the affidavit-in-reply that the Chief Moderator is also available at the centre and in case of any problem, he guides Senior Evaluators. All such evaluators are duly qualified in the subjects and appointed from the merit

list maintained for the purpose. The key answers are also provided to such evaluators. It is stated that the Higher Secondary School Certificate Examination Regulations do not provide for re-evaluation of marks and therefore, the candidates cannot claim any right of reassessment. Reliance is placed in support of this submission by the respondent on the Division Bench judgements of this Court in Kum. Priti N. Dalal Vs. Gujarat Secondary Education Board and anr., reported in 21(2) G.L.R 296 and Rajendra R. Dave Vs. Gujarat Secondary Education Board, reported in 21(2) G.L.R 318.

The moderator's affidavit-in-reply has been filed as regards the subject of Biology, as according to the learned Counsel for the respondent, that moderator was available. In that affidavit, it is stated by the moderator that she had an experience of over 20 years in the subject of Biology for which she was an examiner. She has then proceeded to give reasons for each moderation she made in the petitioner's paper and has stated that there was justification of reduction of marks. It will not be appropriate for this Court to sit in appeal over the opinion of the moderator which is expressed in respect of each answer for which the moderation is done.

The learned Counsel appearing for the petitioner strongly contended that gross injustice would be caused to a student if the answers are not correctly assessed. He submitted that when the first evaluator had given higher marks, the moderator could not have reduced them in this manner.

The marks which were declared were the marks which were moderated. Moderation is a process which is simultaneously done with the evaluation of the answer books and forms an integral part of the evaluation process. Therefore, it cannot be said that any declared marks have been reduced. The marks are given after the entire evaluation process is done. It will not be appropriate for this Court to examine each such stage of evaluation, which is admittedly done by experts. It would be a very dangerous proposition to get into the process of evaluation in a writ petition, for, in that event there will be thousands of students who will come with complaints stating that they deserved a mark or two for a particular step in answering the sum or for other reasons. It would be difficult for this Court to go into the merits of evaluation done by the evaluators and moderators and ordinarily, the High Court will not exercise its writ jurisdiction for entering into that

field. As held by the Division Bench in Rajendra R. Dave (supra) in a working of autonomous bodies operating in specialised fields, the Court of law should not stretch its long arms to interfere with the working of such autonomous bodies unless the petitioner makes out a case of malafides or a malpractice against them. To extend its jurisdiction beyond these limits is to take an impractical and inexpedient view. In paragraph 7 of the judgement it was observed:-

"If we fall a prey to the temptation of extending our jurisdiction far too wide without setting well defined limits to it, we shall be facing a very sad day, nay, we have started facing it. If out of a lakh of students who annually appear at the Higher Secondary examination only five thousand apply for reassessment and approach this Court on refusal to grant reassessment, without a solemnly affirmed statement that he believes that assessment of his answer books to be an under-assessment, shall we transform ourselves into examiners or shall we appoint an army of fresh examiners for reassessing the allegedly under-valued answer books? If this flood gate is opened, shall we be able to withstand the gushing waters or shall the judiciary be irretrievably submerged and buried by them in a watery grave? It is necessary to remember that we do not have an annual fair of only one examination. More than a dozen such examinations are held every year by each of such Boards and each of more than one hundred Universities in the country and at such examinations not less than a million students appear every year. Rights thrive in a democracy as they ought to but mushrooms must be sternly weeded out."

In Kum. Priti M. Dalal Vs. Gujarat Secondary Education Board and anr. (supra), the Division Bench in context of re-assessment at the examinations held by the Gujarat Secondary Education Board, held that the Board being a statutory body, holds the examination in accordance with the Regulations framed by it and any student appearing at the examination is bound by the Regulations. If the Regulations do not provide for reassessment of answer books, no student can claim it. It was observed that a Court of law cannot perform the role of a legislature and create such a right where there is none. The Division Bench reaffirmed the ratio of the earlier decision in Rajendra R. Dave's case.

On the authority of these judgements of the Division Bench of this Court, it is clear that the petitioner cannot question the assessment by alleging that according to the petitioner, she deserves higher marks or that the moderator should not have moderated in the manner in which it was done. As held above, moderation is an integral process of evaluation and the marks are declared only after that entire process of evaluation is over and it will not be appropriate for this Court to interfere with that process except on the limits which are set out in these two Division Bench judgements. No malafides are alleged against any of the evaluators or against the moderator in the present case. Therefore, there is no question of examining the matter from that angle.

There are however, extreme allegations of malpractices which are of very general and vague nature made in paragraph 6 of the petition as referred to above. The petitioner's allegation that the entire system has become sick and it has totally failed, only displays the presumptuousness and arrogance of the petitioner. Even the sense of disappointment that may be there in the petitioner for getting a few less marks, cannot justify such wholesale denunciation of the system of education. The system has satisfactorily worked for all these years and no better alternative is offered. The allegation in the same paragraph that the field of education has become the biggest trade centre in the country and marks, degrees, ranks, medals and certificates can be purchased by paying the price irrespective of the fact whether the recipient of such degrees, ranks, medals and certificates deserve it or not, is only showing the height of the petitioner's cynicism and the learned Counsel who has drafted the petition using such rhetoric expressions has not realised that this would only destroy good things and does not further any achievable goals. The Counsel when they draft the petition, remain Officers of the Court and are answerable to the society. Such wholesale denunciation of the entire system is nothing but rhetoric and has no place in a writ petition, which is primarily filed to vindicate the rights of the petitioner. The allegations made in this paragraph are absolutely vague and not even a single instance is given where it can be said that the malpractices which are generally referred to have been adopted in the petitioner's case. It is not the case of the petitioner at all at the time of arguments that any malpractice or corrupt practice was adopted in holding of the said examination by any of the evaluators or the moderators. To say the least, such

general accusations against the system are not warranted in a writ petition of this type and more temperate and realistic expressions are expected when the writ jurisdiction is invoked.

The decision of the Hon'ble Mr. Justice Rajesh Balia rendered on 6.9.96 in Special Civil Application No. 5177 of 1996 in the case of Lakshmi Z. Ghevariya Vs. Gujarat Secondary Education Board, was heavily relied upon by the learned Counsel for the petitioner in support of the petitioner's case of reassessing the answer books of these two subjects, so as to remove the changes which were made by the moderator. In that case, the High Court found that the examiner had not adhered to the established norms of marking answers of objective questions. That decision does not lay down any general proposition of law and cannot be read in a manner that would bring a conflict with the aforesaid two Division Bench judgements, which were not cited before my esteemed brother. If at all any conflict is spelt out from any expression in the judgement of Hon'ble Mr. Justice Rajesh Balia, this Court, as a Single Judge, being bound by the Division Bench judgements, would follow the ratio of the Division bench judgements, with which I respectfully agree.

Reliance on the decision of the Supreme Court in Kanpur University Vs. Samir Gupta, reported in AIR 1983 S.C 1230 on behalf of the petitioner can hardly help the petitioner, because in that case it was clearly established that the key answer which was provided by the University was itself wrong. That key answer was published alongwith the result of the test and it was demonstrated to be wrong. In that context, the Hon'ble Supreme Court observed:-

"We agree that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well versed in the particular subject would regard as correct.....Those text books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect."

It is obvious that when key answers are wrong, that would generally affect all the students and no question of individual reassessment would be involved in

such matters. Therefore, the decision of the Supreme Court in Kanpur University's case, cannot assist the petitioner.

Under these circumstances, there is no substance in this petition and it is rejected. Notice is discharged with no order as to costs.
